

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 06-0514P

Income Tax

For the Calendar Year 2005

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC § 6-8.1-10-2.1(d); 45 IAC 15-11-2.

The taxpayer protests the non-filer penalty.

STATEMENT OF FACTS

The non-filer penalty was assessed on the lack of filing the calendar year partnership tax return for the year 2005. The taxpayer is an Indiana resident.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer requests the penalty be abated as the taxpayer was running late with LLC paperwork due to confusion regarding the paperwork, and, the taxpayer being newly opened.

The Department will waive penalty if the taxpayer incurs an unusual error, and, the taxpayer has a quality compliance record.

With regard to the compliance record, the taxpayer has had six errors in the handling of their tax accounts. The Department does not feel this is a quality compliance record that would qualify for abatement of penalty.

With regard to the confusion over the paperwork, this is not considered an unusual error which would qualify for abatement of penalty.

The regulation which controls the application of penalty is 45 IAC 15-11-2(b) which states,

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer.

Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.